

STATE OF MICHIGAN
COURT OF APPEALS

AMERICAN COMMUNICATIONS NETWORK,
INC.,

UNPUBLISHED
December 19, 2006

Plaintiff/Counter-Defendant-
Appellant,

v

No. 264596
Oakland Circuit Court
LC No. 2005-066366-CK

JAMES S. KARASTAMATIS, JR.,

Defendant/Counter-Plaintiff,

and

DELMARVA PLUS, INC.,

Defendant/Counter-Plaintiff-
Appellee.

Before: Murphy, P.J., and Smolenski and Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order confirming an arbitration award. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The parties submitted their dispute to arbitration. The arbitrator determined that plaintiff had breached its contracts with defendants. He further determined that while defendant Karastamatis's claim was barred by the statute of limitations, defendant Delmarva Plus, Inc.'s claim was not and awarded Delmarva damages of \$274,706. Plaintiff contends that the arbitrator erred in determining that certain aspects of Delmarva's claim were not barred by the statute of limitations and in calculating the damages on those aspects of Delmarva's claim that were timely.

The trial court's decision to enforce, vacate, or modify an arbitration award is reviewed de novo on appeal. *Tokar v Albery*, 258 Mich App 350, 352; 671 NW2d 139 (2003). Our review of a binding arbitration award is "strictly limited by statute and court rule." *Krist v Krist*, 246 Mich App 59, 66; 631 NW2d 53 (2003). An arbitration award may be vacated or modified if the arbitrator exceeded his powers. MCR 3.602(J)(1)(c). An arbitrator exceeds his powers whenever he acts beyond the material terms of the contract from which his authority is derived,

or in contravention of controlling principles of law. *Dohanyos v Detrex Corp (After Remand)*, 217 Mich App 171, 176; 550 NW2d 608 (1996). However, the legal error must have been so material or substantial as to have governed the award, and but for which the award would have been substantially different. *Rembert v Ryan's Family Steak Houses, Inc*, 235 Mich App 118, 165; 596 NW2d 208 (1999). In addition, the error must appear on the face of the award or in the reasons for the decision, which are substantially a part of the award. *Dohanyos, supra*; *Smith v Motorland Ins Co*, 135 Mich App 33, 40; 352 NW2d 335 (1984). The court cannot engage in contract interpretation, which is an issue for the arbitrator to determine, or review the arbitrator's factual findings. *Konal v Forlini*, 235 Mich App 69, 74-75; 596 NW2d 630 (1999).

"[A]rbitrators derive their authority to act from the parties' arbitration agreement." *Krist, supra* at 62, citing *Gordon Sel-Way, Inc v Spence Bros, Inc*, 438 Mich 488, 495; 475 NW2d 704 (1991). Arbitration is recognized as a matter of contract, *Rowry v University of Michigan*, 441 Mich 1, 10; 490 NW2d 305 (1992) and must be enforced according to their terms to effectuate the intentions of the parties. *Amtower v William C Roney & Co (On Remand)*, 232 Mich App 226, 233-234; 590 NW2d 580. Unless the language of the parties' arbitration agreement plainly removes the issue of timeliness of the claim from the purview of the arbitrator, the timeliness of the claim is a procedural matter for the arbitrator to decide. *Id.* at 239-240.

Here, there is no dispute that the statute of limitations issue was a matter for the arbitrator to decide. He determined that while Karastamatis's claims were untimely, Delmarva's claims were not and Delmarva's damages amounted to \$274,706. There is nothing on the face of the award itself which indicates how the arbitrator applied the law to the facts of this case or how he determined Delmarva's damages. Thus, there is no error apparent on the face of the award. *Dohanyos, supra* at 177; *Smith, supra* at 40-41. To find that the arbitrator committed an error of law, the trial court would have had to review the entire record and reach an independent determination of the issues. A court may not substitute its judgment for that of the arbitrator. *Dohanyos, supra*; *Gordon Sel-Way, supra* at 497. The trial court did not err in confirming the award.

Affirmed.

/s/ William B. Murphy
/s/ Michael R. Smolenski
/s/ Kirsten Frank Kelly